No. 11096.

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

SISQUOC RANCH COMPANY, a Corporation, on its own behalf and on behalf of Homer Sheldon Green,

Appellant,

vs.

MAX ROTH, Lt. Colonel, Infantry, Army of the United States,

Appellee.

APPELLEE'S BRIEF.

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APPELLEE'S BRIEF.

Jurisdiction.

The District Court had jurisdiction under Section 751 of the Judicial Code (28 U. S. C. A. 451). The final order of the District Court was entered on June 5, 1945 [R. 47]. This Court has jurisdiction under Section 765 of the Judicial Code (28 U. S. C. A. 463).

Statutes and Regulations Involved.

Section 751 of the Judicial Code (28 U. S. C. A. 451), provides:

> "Section 451. Power of courts. The Supreme Court and the district courts shall have power to issue writs of habeas corpus."

Section 10(a)(2) of the Selective Training and Service Act of 1940 (50 U. S. C. App. 310(a)(2)) provides in part:

> "(2) * * * There shall be created one or more local boards in each county or political subdivision * * *. Such local boards, under rules and regulations prescribed by the President, shall have power within their respective jurisdictions to hear and determine, subject to the right of appeal to the appeal boards herein authorized all questions or claims with respect to inclusion for, or exemption or deferment from, training and service under this Act of all individuals within the jurisdiction of such local boards. The decisions of such local boards shall be final except where an appeal is authorized and is taken in accordance with such rules and regulations as the President may prescribe. * * * The decision of such appeal boards shall be final in cases before them on appeal unless modified or changed by the President as provided in the last sentence of section 5(1) of this Act * * *."

Section 5(k) of the Selective Training and Service Act of 1940, as amended, known as the "Tydings Amendment" (50 U. S. C. App. 305(k)), provides:

> "(k) Every registrant found by a selective service local board, subject to appeal in accordance with section 10(a)(2), to be necessary to and regularly engaged in an agricultural occupation or endeavor essential to the war effort, shall be deferred from training and service in the land and naval forces so long as he remains so engaged and until such time as a satisfactory replacement can be obtained: *Provided*, That should any such person leave such occupation or endeavor, except for induction into the land or naval forces under this Act, his selective serv-

ice local board, subject to appeal in accordance with section 10(a)(2), shall reclassify such registrant in a class immediately available for military service, unless prior to leaving such occupation or endeavor he requests such local board to determine, and such local board, subject to appeal in accordance with section 10(a)(2), determines, that it is in the best interest of the war effort for him to leave such occupation or endeavor for other work."

Statement.

Homer Sheldon Green, the inductee on whose behalf appellant seeks the writ of habeas corpus, registered with his local draft board under the Selective Training and Service Act of 1940, on June 30, 1942 [R. 3]. At that time Green appears to have been about 19 years of age [R. 2].

Green's classifications by the local and the appeal boards under the Selective Training and Service Act between June 30, 1942, and January 10, 1944, do not appear in the record.[1]

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[1]The local board's files as to Green were not made a part of the record herein by appellant, and the copies of letters and other materials included in the record obviously constitute only a portion of those files, which include memoranda of local and appeals board actions, and other items, including a lengthy questionnaire required from all registrants pursuant to Selective Service Regulation 621.1 and 621.2. These provide:

> 621.1 *Mailing Questionnaires.* (a) The local board shall mail a Selective Service Questionnaire (Form 40) to each registrant in strict accordance with the order numbers, from the smallest to the largest. Selective Service Questionnaires (Form 40) shall be mailed as rapidly as possible, consistent with the ability of the local board to give them prompt consideration upon their return.
>
> 621.2. *Time allowed to return Questionnaire.* (a) Unless the local board grants an extension of time, as explained below, the registrant shall complete and return his Selective Service Questionnaire (Form 40) within 10 days after the date on which it is mailed to him * * *

Insofar as the record reveals, appellant employed Green on about October 15, 1943 [R. 22, 28]. However, on October 8, 1943, appellant filed with Green's local board a request for Green's deferment on occupational grounds for a period of one year [R. 16, 18], and on October 26, 1943, filed a supplemental request for such deferment [R. 15-17]. Green did not at any time seek deferment [R. 45].

On January 10, 1944, Green's local board classified him in Class II-C (occupational deferment for agricultural workers) until April 4, 1944 [R. 18].[2] On March 30, 1944, appellant filed with Green's local board another request for the occupational deferment of Green [R. 6, 18], and on July 22, 1944, the local board again classified Green in Class II-C [R. 7, 23]. Six months later, on December 21, 1944, the local board unanimously reclassified Green from Class II-C to Class I-A (available for military service) [R. 3, 8, 23]. Thereupon appellant, not Green, filed an appeal from the action of the local board [R. 8, 23, 26], and on February 27, 1945, the appeal board, upon consideration of the appeal voted unanimously to classify Green in Class I-A [R. 3, 23, 26, 45].

On March 3, 1945, appellant wrote to the local board, demanding that the appeal board reconsider its action and that Green be placed in Class II-C [R. 9, 23-28], and on March 6, 1945, the Government appeals agent wrote to

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[2]Green probably was reclassified I-A at the end of this period. [See R. 27.]

the State Director of Selective Service, recommending that the latter request the appeal board to reconsider its I-A classification of Green, or himself appeal to the President [R. 9-10]. On March 16, 1945, the State Director rejected both requests [R. 10].

On March 30, 1945, Green, complying with an order of his local board, reported to an induction center for a physical examination, and was notified next day to report for induction into the armed forces of the United States on April 6, 1945 [R. 10, 11, 32].

On April 5, 1945, appellant again sought to obtain from the local board Green's continued deferment, but without success [R. 11-12], and Green was inducted into the armed forces on April 6, 1945 [R. 32].

On that day, also, appellant obtained from the District Court an order to show cause why a writ of habeas corpus releasing Green should not be granted. [R. 31]. Respondent thereupon filed a return to the order to show cause and a hearing was had before the district court on April 16, 1945 [R. 33-34]. The Court denied appellant's petition for a writ of habeas corpus on May 31, 1945 [R. 35]. Thereafter, on June 5, 1945, a second hearing was had upon the petition with certain amendments, and the Court again denied the petition, as amended [R. 36-43, 46-47].

In dismissing appellant's petition on June 5, 1945, the District Court specifically noted that Green had not made any application or request for deferment in Class II-C [R. 45]. The Court then recited that Green was clas-

sified on July 22, 1944, as an agricultural worker, that he was thereafter reclassified I-A and notified of his classification; that his employer, appellant, requested a hearing under the reclassification, which was denied by the local board; and that appellant thereupon appealed to the appeal board, which unanimously affirmed Green's I-A classification. The Court then concluded that appellant, the employer of Green, was not entitled to notice, and that "the contractual relation of the Ranch Company [appellant] and the registrant, Green, did not supersede the general welfare of the nation, and did not give the Ranch Company, the employer, the standing contended for" by it [R. 45].

Question Presented.

The sole question presented is whether Green was denied due process by the selective service boards.[3]

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[3]While appellant presents four "issues" which it considers to be before this Court (App. Br. p. 9), the sole question before this Court, we submit, is that stated above. We shall, however, dispose of appellant's other contentions in our argument.

ARGUMENT.

There Was No Denial of Due Process by the Selective Service Boards.

I.

Appellant's basic complaint is predicated upon the fact that Green, once having been classified in Class II-C, was thereafter reclassified to Class I-A, which action, appellant asserts (App. Br. pp. 14-24), was in contravention of the provisions of the so-called "Tydings Amendment," *supra*. According to appellant, in effect, a registrant cannot be reclassified from Class II-C without proof that he is no longer engaged in an agricultural occupation or pursuit essential to the war effort, which proof, appellant in effect, asserts, was lacking in Green's case, constituting a lack of due process. There is no merit to these contentions.

It is settled, of course, that Congress having made no provision in the Selective Training and Service Act for the review of draft board classifications by the courts, no such review will be undertaken.[4] In fact, appellant

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[4]Appellant's contentions (App. Br. p. 30) that respondent concedes that there is no evidence whatsoever to support the local and appeal board's reclassification of Green, is plainly unsound. As we demonstrate below, the local and appeal boards considered not only the registrant's file but also the relative needs of agriculture and the armed forces, and other general factors which are necessarily before the boards. Moreover, for the purposes of expeditious disposal of appellant's amended petition, which on its face presents only issues of due process, respondent in effect demurred, conceding for that purpose that there is no dispute as to the "facts" stated in the petition and the amended petition, these "facts" relate to the procedural steps involved in Green's various classifications and reclassifications, and obviously do not include appellant's conclusions as to the sufficiency of the evidence before the local and appeal boards. Cf. *Cramer v. France*, 148 F. (2d) 801 (C.C.A. 9). As stated above, also, the file which was before the Selective Service boards must by law con-

specifically concedes that "draft board decisions on questions of fact are final" (App. Br. p. 25).

In this instance, not only the local board, but also the appeal board and the State Director of Selective Service independently, but unanimously, agreed that upon all of the evidence before them, considered in the light of various exigencies of the war and other general conditions (see *infra*), Green should now be classified I-A.

In thus acting, the local and appeal boards proceeded under Section 10(a)(2) of the Selective Training and Service Act (*supra,* p. 2) and the applicable regulations, which provide the local boards with authority to reconsider the classification of any registrant at any time prior to induction; Selective Service Regulation 626.1 which provides in part that "No classification is permanent"; Regulation 626.2(a) which authorizes a local board to reopen and reconsider anew the classification of a registrant either upon the request of certain designated persons or "upon its own motion if such action is based upon facts not considered when the registrant was classified which would justify a change in the registrant's classification"; and Regulation 622.25-2, which provides

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tain, in addition to the items which appellant introduced in evidence, at least the questionnaire which is required of each registrant. It is self-evident, therefore, that respondent's concession as to the "facts" embraced only those facts material to the issues before the district court, namely the facts as to procedure. The sufficiency of the evidence upon which Green's classifications and reclassifications were based, was not in issue, and appellant's conclusions as to such sufficiency were plainly not accepted by respondent in its concession.

that II-C deferments shall be for a period of six months or less, at which time they are to be reopened for reconsideration.[5]

The "Tydings Amendment" in effect affirms and directly contemplates this continuing process of classification as applicable to persons deferred under its provisions, by specifically stating that a registrant is to be deferred "so long as" he remains regularly engaged in an agricultural occupation or endeavor "essential to the war effort," and "until such time as a satisfactory replacement can be obtained." Plainly this amendment on its face contemplates periodic reconsideration of a registrant's status in the light of the various conditions in the community best known to the local boards, to enable them to determine whether the registrant remains "regularly engaged" in an agricultural occupation, whether "a satisfactory replacement can be obtained," and whether the specific occupation or endeavor in which the registrant is engaged is "essential to the war effort," all considered in the light of the needs of the armed forces.

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[5]This section provides as follows:

"622.25-2 *Length of Deferments in Class II-C.* (a) Class II-C deferments * * * shall be for a period of six months or less, * * * If there is change in the registrant's status during the period of deferment in Class II-C, his classification shall be reopened and considered anew.

"(b) At the expiration of the period of a registrant's deferment in Class II-C, his classification shall be reopened. The registrant should be continued in Class II-C for a further period of six months or less if such classification is warranted. A registrant * * * shall not be continued in Class II-C unless the local board is satisfied that a satisfactory replacement cannot be obtained. The same rules shall apply when again classifying a registrant at the end of each successive period for which he has been classified in Class II-C.

The consideration of such factors in the reclassification process was specifically directed by Lewis B. Hershey, National Director of Selective Service, who in part stated in the January, 1945, issue of "Selective Service":

"The Selective Service System has the job of furnishing 750,000 acceptable men to the land and naval forces before July 1, 1945. These men should be the best that can be made available as combat replacements. In recent months the armed forces have repeatedly stressed their extreme need for young men. The supply of men 18 through 29 and of the types essential to the successful prosecution of the war by the armed forces is most limited. It is evident that there are insufficient men below 26 years of age to meet the calls which will be placed upon the local boards.

"The continued production of the munitions of war and of food must be maintained. This production can and must be maintained by the use of the least possible number of deferred men within the age group 18 through 29, and of the physical standards required by the armed forces.

"The decision for each registrant must be made initially by his local board. * * *

"During this month certain coordinated steps have been taken by the Government to aid in the procurement of suitable young men for the armed forces and to assist in the continued production of the munitions of war. * * *

"Regardless of these measures the necessity of finding all available men under 26 requires the most careful screening of all such men.

"Many individuals believe that Section 5(k) of the Selective Training and Service Act (The Tydings Amendment) creates an exemption for farmers,

but, as you well know, the amendment prescribes the requirements that a man must meet for agricultural deferment and does not provide an exemption from military service. It vests in the local boards the duty of determining, in the case of each registrant, whether or not such registrant meets the requirements of law after a full consideration of all of the pertinent facts. These facts include the extent the registrant is engaged in agriculture, how essential in the war effort are the products of his efforts, how necessary is he to this production, and whether there is a replacement available.

"The urgent present need for young men by the armed forces cannot fail to be a factor which the local boards must weigh in considering deferment from service. The Act of which Section 5(k) is a part was passed in the words of the Act itself because 'the Congress hereby declares that it is imperative to increase and train the personnel of the armed forces of the United States.'"

"The local boards are ever conscious that their primary job has always been to procure men of the right age and type for the land and naval forces. They have considered always that the fundamental policy of Congress was expressed in these words, 'The Congress further declares that in a free society the obligations and privileges of military training and service should be shared generally in accordance with a fair and just system of selective compulsory military training and service.'

"The Congress originally delegated to the President the power to issue regulations to govern deferments; it later provided by the Tydings Amendment the method to be used in determining whether or not a registrant should be given an agricultural deferment. Neither of these provisions change the fun-

damental purpose of the Act, which was to provide men for the armed forces, or the basic principle of a fair and just system of selective compulsory military training and service.

"State Director Advice No. 288 provided information which had been furnished by the Secretaries of War and Navy, by the Chairman of the War Production Board and War Food Administrator. *It includes a finding by the President that the need for all of the men now agriculturally deferred in II-C under 26 years of age is not as essential to the war effort as is the need for young men in the armed forces.* It was stated that the President felt that in view of existing conditions, agriculture, like other war industries with few exceptions, can be carried on by those above 26. [See *infra.*]

"The purpose of State Director Advice No. 288 was to provide the information as to the current urgent needs of the armed forces and the relative needs of agriculture to the local boards for their most serious consideration. It did not seem to me at that time necessary to indicate that there was no intention to annul, to change, or to ignore the provisions of the Tydings Amendment, as State Director Advice No. 288 specifically stated: '*The President has authorized me to ask you to take such action in connection with the administration of the Tydings Amendment as may be necessary to provide to the full extent permitted by law for the reclassification and induction of the men agriculturally deferred in the age group 18 through 25.*'

"* * * The effort was to bring to each member of the Selective Service System full information concerning the present situation in the words of those primarily responsible for the prosecution of the war. The duty then rested on the local board to consider

each case and decide which registrants still met the requirements of the law for agricultural deferment.

"I am aware of the tremendous responsibilities which the necessities of war now place upon local board members. I am aware of the great fund of good judgment and fortitude which local board members have displayed for more than 4 years. I am reassured by the knowledge that when you have weighed all of the factors you will, pursuant to the provisions of the Tydings Amendment, render your own judgment to defer consistent with the needs today of the armed forces for young fighting men." (Italics added.)

State Director Advice No. 288 issued January 3, 1945, provides:

"The following letter from the Director of the Office of War Mobilization and Reconversion has been received by the Director of Selective Service:

'The Secretaries of War and Navy have advised me jointly that the calls from the Army and Navy to be met in the coming year will exhaust the eligibles in the 18 through 25 year age group at an early date. The Army and Navy believe it essential to the effective prosecution of the war to induct more men in this age group.

'You have reported that other than the men becoming 18 years of age the only remaining substantial source in this age group is in the 364,000 men now deferred because of agricultural occupation. You have further advised me that if this group is not available, you must call into the service occupationally deferred men in the next age group, 26 years and older, most of whom are fathers.

'The Chairman of the War Production Board, Mr. Krug, advises me that the loss of these men

would make it extremely difficult, if not impossible, to meet critical war demands. Moreover, these older men would not meet the expressed needs of the Army and Navy.

'The War Food Administrator, Mr. Jones, has advised me that although we still need all of the food we can raise, the loss of production through the induction into the armed services of the physically qualified men in this 18 through 25 year age group who do not clearly fall within the scope of the Tydings Amendment should not result in a critical condition.

'The Tydings Amendment to the Selective Service Act does not give the agricultural worker absolute exemption from selective service. It was not so intended. In asking Congress to adopt this amendment Senator Tydings said: "All my amendment seeks to do is to provide that whenever a person is employed continuously in good faith in the production of food, and taking him off the farm would leave a large section of land uncultivated, and there is no replacement, he shall be deferred upon those facts until a replacement can be found."

'I have reported these facts to the President. He has found that the further deferment of all men now deferred in the 18 thru 25 age group because of agricultural occupation is not as essential to the best interest of our war effort as is the urgent and more essential need of the Army and Navy for young men. The President feels in view of existing conditions, agriculture like our other war industries can, with few exceptions, be carried on by those in the older age groups.

'The President has authorized me to ask you to take such action in connection with the administration of the Tydings Amendment as may be neces-

sary to provide to the full extent permitted by law for the reclassification and induction of the men agriculturally deferred in the age group 18 through 25.'

"Forward text of Justice Byrnes' letter to all local boards and boards of appeal. *Direct all local boards to promptly review the cases of all registrants ages 18 through 25 deferred in class II-C* excluding those identified by the letters 'F' or 'L.' *In considering the classification or retention of such registrants in class II-C, local boards will consider the President's finding that 'the further deferment of all men now deferred in the 18 through 25 age group because of agricultural occupation is not as essential to the best interest of our war effort as is the urgent and more essential need of the Army and Navy for young men.'* Also direct local boards to issue orders for preinduction physical examination to all registrants ages 18 through 25 in class II-C excluding those identified with the letters 'F' or 'L' in accordance with the most expeditious schedules it is possible for you to arrange with the commanding general of your service command. In order to accomplish the review and preinduction physical examination as promptly as possible, local boards may conduct the review of any such class II-C registrants at the same time as they are forwarding such registrants for preinduction physical examination. (Italics added.)

Hershey."

That the construction of the "Tydings Amendment" contended for by appellant is not correct is further conclusively demonstrated by the fact that Congress, itself recognizing the retention of discretion in the selective service boards under that amendment, sought to

remove its discretionary character, but was unsuccessful. Thus during the early part of this year the Congress submitted to the President House Joint Resolution 106, which would further amend the "Tydings Amendment" by causing the further deferment of agricultural workers by limiting the basis upon which the local boards could predicate their findings for classification purposes. The resolution provided:

"H. J. Res. 106.

"Seventy-Ninth Congress of the United States of America: At the first session, begun and held at the City of Washington on Wednesday, the third day of January, One Thousand Nine Hundred and Forty-Five Joint Resolution to amend Section 5(k) of the Selective Training and Service Act of 1940, as amended, with respect to the deferment of registrants engaged in agricultural occupations or endeavors essential to the war effort.

"*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That Section 5(k) of the Selective Training and Service Act of 1940, as amended, is amended by adding at the end thereof the following new paragraph:

'In carrying out the provisions of this subsection, the selective-service local board in classifying the registrant *shall base its findings solely and exclusively on whether the registrant is necessary to and regularly engaged in an agricultural occupation or endeavor essential to the war effort and whether a satisfactory replacement can be obtained, without reference to the relative essentiality of the registrant to an agricultural occupation or endeavor as compared with any other occupation, service, or*

endeavor; and the foregoing provision of this sentence shall apply upon any appeal or review of a decision made thereunder by a selective-service local board. Such deferment shall be made by said board without consideration of any other circumstance or condition whatsoever; and during the period of such deferment for such purpose, no other classification, of said registrant, shall be made by said board: Provided, That no registrant who is qualified to serve in the armed forces shall be deprived thereby of the right to volunteer for such service.' " (Italics added.)

On May 3, 1945, the President returned to the Congress this Resolution without approval, stating in part:

"I return herewith, without my approval, House Joint Resolution 106, to amend Section 5(k) of the Selective Training and Service Act of 1940, as amended, * * *. The indicated purpose of the amendment is to cause the deferment of large number of registrants engaged in agricultural production.

"In time of war it is the paramount obligation of every citizen to serve his country to the best of his ability. Under our democratic system male citizens are selected for service in the armed forces pursuant to an act of Congress which prescribes a fair and impartial method of selection. It is the essence of that act, the Selective Training and Service Act of 1940, that no one shall be placed in a favored position, and thus safeguarded from the hazards of war, because of his economic, occupational, or other status. The sole test under the law is whether the individual can better serve his country in the armed forces or in an essential activity in support of the war effort.

"The Congress, when it passed the Selective Training and Service Act in 1940, wisely provided that no deferment from service in the armed forces should be made in the case of any individual — except upon the basis of the status of such individual, and no such deferment shall be made of individuals by occupational groups * * *.

"I do not believe that it was the real intent of Congress that agricultural workers should be given blanket deferment as a group, *or that Congress intended to enact legislation formulating the national policy that agricultural employment was more essential than any other type of employment, including service in the armed forces of the United States in the protection of our country.* Nevertheless, the legislation now passed by the Congress and presented for my approval would appear to have that result and to constitute a departure from the sound principle hereinbefore stated on which we have erected our military manpower mobilization system. It would apparently provide that, *in determining an individual deferment, the relative essentiality of the the agricultural occupation cannot be gauged against an industrial occupation or against military service itself. Thus in practical effect it would single out one special class of our citizens, the agricultural group, and put it on a plane above both industrial occupation and military service.*

"Enactment of such a law would * * * do violence to the basic principle embodied in Section 5(e)(1) of the Selective Training and Service Act, which prohibits deferment by occupational groups or groups of individuals, a principle which was incorporated into the present law because of the deferment scandals of the last war, particularly in shipyards. The

resolution would also limit the authority now vested in the President by Section 5(1) to make final determination of all questions of exemption or deferment under the act, *and would deprive him of the right to determine the relative essentiality of the needs of agriculture and the armed forces.*

"In my opinion, no group should have any special privileges, and, therefore, I am returning the joint resolution without my approval." (Italics added.)

The Congress refused to override the President's rejection, 91 Cong. Rec. 4232.

Manifestly the local board was not only within its right but under the specific duty of reconsidering Green's II-C classification from time to time in the light of its prior knowledge and action in the case, new or additional evidence before it as to Green particularly or as to general conditions bearing upon the question of the armed forces' needs, the essentiality of Green's and appellant's work to the war effort, the general availability of replacements for workers of Green's type, the relative needs of agriculture, particularly appellant, and the armed forces, and the President's and Hershey's directives, while at least the appeal board in addition considered general information concerning other relevant economic, industrial and social conditions (627.24).[6] Regardless of whether the local and appeals boards may have concluded—as they readily could—that Green was not irreplacable, that he

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[6]It should be noted also in this respect that even the "facts" presented by appellant in its various writings can readily support the conclusion that Green was engaged in automotive, machine and construction work rather than in agricultural pursuits [R. 5, 11, 15, 25], and that he was thus performing functions for which facilities and replacements were available.

was not engaged in an endeavor essential to the war effort, or that he or appellant in other respects were not within the intent or spirit of the "Tydings Amendment," the needs of the armed forces were paramount and, if necessary, every person deferred in Class II-C could have been reclassified 1-A and inducted into the armed forces.

Finally, while appellant complains against the local board, it is clear that the action of the appeal board only is in issue since the appeal board considered the entire matter *de novo* (Cf. the *Cramer* case, *supra*), and reached a similar conclusion by a unanimous vote of its members;[7] and the State Director of Selective Service likewise concurred that Green's I-A classification was proper.

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[7]Appellant points to various statements made by it and to other material which it offered in support of its deferment claim as constituting "substantial and uncontradicted evidence supporting the claim for continued deferment" (App. Br. pp. 32-33). As we have said, this "evidence" was not all that was before the boards. But even if it was the sole evidence as to Green's role in appellant's enterprise, the boards were not required to accept such evidence or to accord it full or even any weight, or, if credited, to accept it in disregard of prevailing general conditions, the needs of the armed forces, or other similar considerations.

As stated by this Court in *Sullivan v. Swatzka*, 148 F. (2d) 965, 966:

> "Petitioner's position appears to be that claim for agricultural deferment must be granted unless the Local Board is presented with evidence contradictory to that offered by the registrant. But the boards have no facilities for assembling evidence. The board members are non-paid citizens of the community, and one claiming deferment must establish to the satisfaction of his board that he is entitled to it. The Appeal Boards are granted broad general powers by the Regulations."

And clearly the opinions and recommendations of the War Board of the United States Department of Agriculture to the local board, and of the appeals agent to the State Director of Selective Service were no more than mere conclusions on their part which are entitled only to weight as such but are in no wise determinative of Green's classification status.

II.

Appellant asserts (App. Br. p. 24) that it and Green were "denied procedural due process in the matter of notice and hearing" that appellant received no hearing before the *local board* (App. Br. p. 26) although, appellant claims, it was entitled to such a hearing; that the classification action of the *local board* was "final" in a sense requiring a hearing before it (App. Br. p. 28); and that the local board should have given appellant or Green notice prior to reclassifying Green (App. Br. pp. 28-30). These contentions are without merit.

(a) Selective Service Regulation 625-1 provides that every registrant,[8] and no other person, shall have the right to appear before his local board *after* his classification has been determined.[9]

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[8]Section 601.11 defines a registrant as "a person registered under the Selective Service law * * *."

[9]"625.1. *Opportunity to appear in person.* (a) Every registrant, after his classification is determined by the local board (except a classification which is itself determined upon an appearance before the local board under the provisions of this part), shall have an opportunity to appear in person before the member or members of the local board designated for the purpose if he files a written request therefor within 10 days after the local board has mailed a Notice of Classification (Form 57) to him. * * *

"(b) No person other than the registrant may request an opportunity to appear in person before the local board."

Also:

"625.2 *Appearance before local board.* (a) At the time and place fixed by the local board, the registrant may appear in person before the member or members of the local board designated for the purpose. * * * (b) At any such appearance, the registrant may discuss his classification, may point out the class or classes in which he thinks he should have been placed, and may direct attention to any information in his file which he believes the local board has overlooked or to which

Appellant is not the registrant; and appellant does not claim that *Green* was denied the opportunity of appearing before the local board in accordance with the provisions of the applicable regulations (*supra*).

There is no provision for the appearance of the registrant's employer before the local board. Appellant's contention that "by necessary implication" (App. Br. p. 27) the employer was given such the right to a personal appearance by the "Tydings Amendment" is entirely without basis; no such right was either provided for or is present by implication. Of course, appellant's further contention that a personal hearing had to be accorded it because the local board's "decision was 'final'" (App. Br. p. 28) is likewise baseless, since the classification of Green is necessarily that accorded to him by the appeal board, which acts *de novo* in the matter (See *supra*, p. 20.) And appellant's complaint, if any, should be directed toward the appeals board, which, however, grants no personal hearings to registrants.

(b) There is no substance, also, to appellant's contention that the local board's failure to give Green or appel-

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he believes it has not given sufficient weight. The registrant may present such further information as he believes will assist the local board in determining his proper classification. Such information shall be in writing or, if oral, shall be summarized in writing and, in either event, shall be placed in the registrant's file. * * * (c) After the registrant has appeared before the member or members of the local board designated for the purpose, the local board shall consider the new information which it receives and shall again classify the registrant in the same manner as if he had never before been classified. * * *. (d) After the registrant has appeared before the member or members of the local board designated for the purpose, the local board, as soon as practicable after it again classifies the registrant, shall mail notice thereof on the Notice of Classification (Form 57) to the registrant and on Classification Advice (Form 59) to the persons entitled to receive such notice or advice on an original classification under the provisions of section 623.61."

lant notice *before* reclassifying Green from II-C was a fatal error requiring issuance of the writ of *habeas corpus* (App. Br. pp. 28-29). Appellant does not—nor can it—assert that notice of the local board's action was not given appellant or Green after Green had been reclassified. Such notice obviously was given. And that is all that was required by the regulations (625-1, *supra*). Moreover, appellant availed itself of its right to appeal to the board of appeal (Regulation 627.2), which reconsidered the case, and then classified Green in Class I-A (*supra*).

Conclusion.

Appellant has failed to establish that Green was denied due process in his classification by the selective service boards.

We concur in the conclusion of the court below that "the contractual relation of the Ranch Company [appellant] and the registrant, Green, did not supersede the general welfare of the Nation * * *." Appellant plainly has no standing or cause to complain either on its own behalf or on behalf of Green. The order of the District Court dismissing the petition for a writ of *habeas corpus* should be affirmed.

Respectfully submitted,

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